

Regular Session, 2009

HOUSE BILL NO. 720

BY REPRESENTATIVES JANE SMITH, ROBIDEAUX, HENRY BURNS,
CHAMPAGNE, LITTLE, MILLS, PERRY, PUGH, SIMON, SMILEY, AND
THIBAUT AND SENATORS CROWE, DUPLESSIS, MICHOT, AND SMITH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TAX/STATE: Enacts the Louisiana Tax Delinquency Amnesty Act of 2009

1 AN ACT

2 To enact the Louisiana Tax Delinquency Amnesty Act of 2009; to provide for definitions;
3 to require the Department of Revenue to establish a tax amnesty program as provided
4 for in this Act; to provide for terms and conditions of the program; to provide for the
5 disposition of the monies collected pursuant to the tax amnesty program; to provide
6 for an effective date; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. This Act shall be known as and may be cited as the "Louisiana Tax
9 Delinquency Amnesty Act of 2009".

10 Section 2. Definitions. As used in this Act, the following terms have the meaning
11 ascribed to them in this Section, except when the context clearly indicates otherwise:

12 (1) "Courier" means a messenger other than the United States Postal Service that
13 delivers parcels, packages, and the like, containing returns, reports, and other documents or
14 payments.

15 (2) "Department" means the Department of Revenue.

16 (3) "Postmark" means an official mark made by the United States Postal Service on
17 a piece of mail to cancel the stamp and to indicate the place and date of sending.

18 (4) "Tax period" means any period for which a tax return is required by law to be
19 filed with the department.

20 (5) "Taxpayer" means any individual or entity subject to any tax imposed by any law
21 of the state of Louisiana, payable to the state of Louisiana, and collected by the department.

1 Section 3(A). The department shall develop and implement a tax amnesty program
2 in accordance with the provisions of this Act. The secretary shall provide by regulation as
3 necessary for the administration and implementation of this amnesty program. The secretary
4 shall publicize the tax amnesty program in order to maximize the public awareness of and
5 participation in the program. The secretary may, for purpose of publicizing the tax amnesty
6 program, contract with any advertising agency within or outside this state and use public
7 service announcements, pamphlets, mail notices, and print, television, and radio
8 announcements.

9 B. The amnesty program shall be effective for a period not to exceed two
10 consecutive calendar months between July 1, 2009, and June 30, 2010, at the discretion of
11 the secretary. The tax amnesty program shall apply to all taxes administered by the
12 department except for motor fuel taxes and penalties for failure to submit information reports
13 that are not based on an underpayment of tax.

14 C. Except as provided in Subsection B, the following taxes are eligible for amnesty:

15 (1) Taxes for which the department has issued an individual or a business a proposed
16 assessment, notice of assessment, bill, notice, or demand for payment on or after July 1,
17 2001, and before January 1, 2009; or

18 (2) Taxes that became due on or after July 1, 2001 and before January 1, 2009.

19 D. Participation in the amnesty program shall be conditioned upon the agreement
20 of the taxpayer that the right to protest or initiate an administrative or judicial proceeding for
21 any tax period upon which amnesty is granted is barred.

22 E. Amnesty for matters under examination and in litigation.

23 (1) Taxpayers involved in field audits or litigation that participate in the amnesty
24 program shall agree to abide by the department's interpretation of the law with respect to
25 issues involved in the audit or litigation resolved through amnesty for all taxable periods
26 beginning in 2010, 2011, and 2012, or be charged the negligence penalty under R.S.
27 47:1604.1.

28 (2) Taxpayers involved in litigation that elect to participate in amnesty shall agree
29 to pay all applicable attorney fees pursuant to R.S. 47:1512 and its own costs of litigation
30 before amnesty can be applied for.

1 F. Taxpayers with existing liens on their property, both movable and immovable,
2 filed pursuant to R.S. 47:1577, as well as taxpayers the department has initiated proceedings
3 against under the assessment and distraint procedure pursuant to R.S. 47:1569 through 1573
4 are eligible for amnesty; however, taxpayers are required to pay any and all lien fees
5 associated with the tax periods for which amnesty is applied for.

6 G. Amnesty will be granted only for eligible taxes to eligible taxpayers who apply
7 for amnesty during the amnesty period on forms prescribed by the secretary and who pay all
8 of the tax, all fees and costs, if applicable, and half of the interest due upon filing the
9 amnesty application. The amnesty application for taxpayers involved in field audits or
10 litigation shall include all issues and all eligible periods involved in the audit or litigation.
11 The secretary reserves the right to require taxpayers to file tax returns with the amnesty
12 application. If the amnesty application is approved, the secretary shall waive the remaining
13 half of the interest and all of the penalties associated with the tax periods for which amnesty
14 is applied. An amnesty payment or application submitted in a properly addressed envelope
15 with sufficient postage delivered by the United States Postal Service is deemed paid on the
16 date it is postmarked. An amnesty payment or application delivered by courier or taxpayer
17 is deemed paid on the date it is delivered to the department's headquarters or a regional
18 office. No installment agreements will be entered into for tax periods that are approved for
19 amnesty.

20 H. Ineligible taxpayers. Amnesty shall not be granted to taxpayers who are parties
21 to any criminal investigation or criminal litigation in any court of the United States or the
22 state of Louisiana pending on the effective date of this Act for nonpayment, delinquency, or
23 fraud in relation to any state tax imposed by a law of the state of Louisiana and administered
24 by the department. Further, a taxpayer who willfully delivers or discloses any false or
25 fraudulent application, document, return, or other statement to the department in connection
26 with an amnesty application shall be ineligible for amnesty and shall be subject to the fraud
27 penalty under R.S. 47:1604 or a penalty of \$10,000, whichever is greater.

28 I. Amnesty applications shall include a written waiver of all rights, restrictions, and
29 delays for assessing, collecting, or protesting taxes and interest due as set forth in R.S.
30 47:1562 through 1565 and 1576. The filing of such applications shall make the tax, interest,

1 and penalty immediately due and payable; subject to the distraint procedure provided for in
2 Title 47; ineligible for refund, credit, or claim against the state; and ineligible for
3 redetermination under the provisions of R.S. 47:1565(C).

4 J. No interest shall be paid on refunds for those amounts previously collected by the
5 department from the taxpayer for a tax period for which amnesty is granted.

6 K. Post amnesty collection penalty. If, following the termination of the tax amnesty
7 period, the secretary issues a deficiency assessment for a period for which amnesty was
8 taken, the secretary shall have the authority to impose penalties and institute civil
9 proceedings or criminal proceedings as authorized by law only with respect to the difference
10 between the amount shown on the amnesty application and the correct amount of tax due.

11 The secretary may by regulation impose after the expiration of the tax amnesty period a cost
12 of collection penalty of twenty percent of any deficiency assessed for any taxable period due
13 on or after July 1, 2001, and ending before January 1, 2009. This penalty shall be in addition
14 to all other applicable penalties, fees, or costs. The secretary shall have the right to waive
15 any or all of the collection penalty when it is demonstrated that any of the deficiency of the
16 taxpayer was not due to negligence, intentional disregard of administrative rules and
17 regulations, or fraud. The imposition of penalties or civil proceedings or criminal
18 proceedings shall not invalidate the amnesty that was previously granted.

19 L. For taxable periods beginning on or after January 1, 2010, and before December
20 31, 2015, taxpayers that participate in amnesty and later fail to comply with any payment
21 and filing provision administered by the secretary shall be subject to the negligence penalty
22 under R.S. 47:1604.1 or a penalty of \$100, whichever is greater.

23 M. The secretary shall maintain a presumption against the waiver of any penalty or
24 the abatement or reduction of any interest for taxpayers eligible to participate in this amnesty
25 program but that fail to do so with regard to a liability that would have been eligible for
26 amnesty.

27 Section 4. The secretary shall retain from monies collected under this Act an amount
28 equal to all penalties waived under this Act, an amount equal to the costs for contractual
29 information technology and amnesty program administration services and an amount equal
30 to any collection fees, legal fees, or any other fees the department incurs that are associated

1 with granting amnesty. Such monies shall be designated as self-generated revenues.
2 Notwithstanding any provision of law to the contrary, amnesty program administration
3 services and information technology services to implement amnesty may be acquired using
4 the emergency procurement process. The secretary shall also retain an amount not to exceed
5 two hundred fifty thousand dollars for advertising expenses from monies collected from
6 taxes paid pursuant to this Act. All remaining monies collected pursuant to any tax imposed
7 by the state of Louisiana under the provisions of this Act shall be paid into the state treasury
8 for credit to the Bond Security and Redemption Fund. After satisfying the requirements of
9 the Bond Security and Redemption Fund, the state treasurer is authorized and directed to
10 transfer all remaining monies for deposit in the State Emergency Response Fund. After a
11 sufficient amount is allocated from the State Emergency Response Fund to pay all state
12 obligations associated with Hurricanes Gustav and Ike, the state treasurer is authorized and
13 directed to transfer all remaining monies for deposit in the state general fund.

14 Section 5. This Act shall become effective upon signature by the governor or, if not
15 signed by the governor, upon expiration of the time for bills to become law without signature
16 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
17 vetoed by the governor and subsequently approved by the legislature, this Act shall become
18 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Jane Smith

HB No. 720

Abstract: Enacts the Tax Delinquency Amnesty Act of 2009.

Proposed law enacts the "Louisiana Tax Delinquency Amnesty Act of 2009" which requires the Dept. of Revenue (DOR) to develop and implement a tax amnesty program to be effective for a period not to exceed two consecutive calendar months between July 1, 2009, and June 30, 2010, at the discretion of the secretary. The tax amnesty program shall apply to taxes for which the department has issued a proposed assessment, notice of assessment, bill, notice, or demand for payment on or after July 1, 2001, and before January 1, 2009, or to taxes that became due on or after July 1, 2001 and before Jan. 1, 2009.

Proposed law provides for DOR to publicize the tax amnesty program in order to maximize the public awareness of and participation in the program.

Proposed law provides that participation in the amnesty program shall be conditioned upon agreement of the taxpayer that the right to protest or initiate an administrative or judicial proceeding for any tax period upon which amnesty is granted is barred.

Proposed law requires that taxpayers involved in field audits or litigation that participate in the amnesty program to agree to abide by DOR's interpretation of the law with respect to issues involved in the audit or litigation resolved through amnesty for all taxable periods beginning in 2010, 2011, and 2012, or be charged the negligence penalty under present law. Taxpayers involved in litigation that elect to participate in amnesty shall agree to pay all applicable attorney fees pursuant to present law and its own litigation costs before amnesty can be applied for.

Proposed law provides that amnesty shall only be granted for eligible taxes to eligible taxpayers who apply for amnesty during the amnesty period on forms prescribed by DOR and who pay all of the tax, all fees and costs, if applicable, and half of the interest due upon filing the amnesty application. If the amnesty application is approved, the secretary shall waive the remaining half of the interest and all of the penalties associated with the tax periods for which amnesty is applied. No installment agreements will be entered into for tax periods that are approved for amnesty.

Proposed law prohibits amnesty from being granted to taxpayers who are parties to any criminal investigation or criminal litigation in any court of the U.S. or La. for nonpayment, delinquency, or fraud in relation to any state tax administered by the department. A taxpayer who willfully delivers or discloses any false or fraudulent application, document, return, or other statement to the department in connection with an amnesty application shall be ineligible for amnesty and shall be subject to the fraud penalty under present law or a penalty of \$10,000, whichever is greater.

Proposed law provides that if, following the termination of the tax amnesty period, DOR issues a deficiency assessment for a period for which amnesty was taken, DOR shall have the authority to impose penalties and institute civil proceedings or criminal proceedings only with respect to the difference between the amount shown on the amnesty application and the correct amount of tax due. Proposed law authorizes DOR to, by regulation, impose after the expiration of the tax amnesty period a cost of collection penalty of 20% of any deficiency assessed for any taxable period due on or after July 1, 2001, and ending before January 1, 2009. This penalty shall be in addition to all other applicable penalties, fees, or costs.

Proposed law provides that for taxable periods beginning on or after January 1, 2010, and before December 31, 2015, taxpayers that participate in amnesty and later fail to comply with any payment and filing provision shall be subject to the negligence penalty under present law or a penalty of \$100, whichever is greater.

Proposed law authorizes DOR to retain from monies collected under the tax amnesty program an amount equal to all penalties waived, an amount equal to the costs for contractual information technology and amnesty program administration services, and an amount equal to any collection fees, legal fees, or any other fees the department incurs that are associated with granting amnesty. Further provides that DOR shall also retain an amount not to exceed \$250,000 for advertising expenses from monies collected from taxes paid pursuant to proposed law.

Proposed law provides that all remaining monies collected under the tax amnesty program shall be paid into the state treasury for credit to the Bond Security and Redemption Fund, and then the state treasurer shall transfer the remaining monies to the State Emergency Response Fund to pay all state obligations associated with Hurricanes Gustav and Ike.

Effective upon signature of governor or lapse of time for gubernatorial action.